

## **BILL ANALYSIS**

C.S.S.B. 231

By: Harris  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Family Code provides for the establishment of paternity and for the establishment and enforcement of child and medical support obligations for a child in suits affecting the child-parent relationship. Child and medical support obligations may be enforced through the use of various remedies prescribed by the Family Code, including income withholding and the assertion of liens for past-due support. The Family Code also provides certain administrative processes for the Title IV-D agency, which is administered by the Texas attorney general in compliance with federal mandates as a condition for the state's receipt of federal funds for its child support enforcement and welfare programs.

The Family Code has been repeatedly amended with regard to the establishment and enforcement of child support obligations to reflect new federal mandates, case law, current practice, and the need to clarify provisions and enhance of procedures provided by law.

C.S.S.B.231 amends and clarifies certain provisions of the Family Code relating to the establishment and enforcement of child support obligations. In addition, this bill provides for the enhancement of administrative processes available to the Title IV-D agency under the Family Code for the enforcement of child support obligations, specifically by providing for withholding for support from lump-sum payments due to an obligor in a Title IV-D case. This bill also makes certain technical corrections and clarifications to Family Code provisions for the use of child support liens and levy and redefines the liability of a person who fails to surrender property subject to lien or levy. Furthermore, the bill provides for the creation of a state child support work group to replace an existing work group under Chapter 231, Family Code.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 105.006(g), Family Code, as follows:

(g) Requires the Title IV-D agency to promulgate and provide forms for use in reporting certain information to the court and the state case registry under Chapter 234, deleting the condition that it be established in order to provide such forms to the state case registry.

SECTION 2. Amends Section 108.001, Family Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the court clerk to transmit to the bureau of vital statistics (bureau) a certified record of the order rendered in a suit, and content requirements therein. Requires that the record be provided on a form furnished by the bureau, completed by the petitioner, and submitted to the clerk at the time the order is filed for record.

(d) Authorizes the Title IV-D agency to transmit the record and information to the bureau and, if requested, the court clerk in a Title IV-D case. Specifies that such records and information are not required to be certified if transmitted under this subsection.

SECTION 3. Amends Section 108.004, Family Code, as follows:

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Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION. Adds Chapters 159 (Uniform Interstate Family Support Act) and 262 (Procedures In Suit By Governmental Entity To Protect Health And Safety Of Child) to the list of chapters under which the clerk is required to transmit to the bureau a record stating loss of jurisdiction, as well as the content requirements thereof.

SECTION 4. Amends Section 154.186(a) and (b), Family Code, to specify that this section (Notice to Employer Concerning Medical Support) applies to an obligee, obligor, or child support agency of this state or another state, and in certain case, the Title IV-D agency of this state or another state.

SECTION 5. Amends Section 157.102, Family Code, as follows:

Sec. 157.102. New heading: CAPIAS OR WARRANT; DUTY OF LAW ENFORCEMENT OFFICIALS. Requires law enforcement officials to treat a capias or arrest warrant under this chapter in the same manner as an arrest warrant for a criminal offense. Makes conforming changes.

SECTION 6. Amends Section 157.268, Family Code, as follows:

Sec. 157.268. APPLICATION OF CHILD SUPPORT PAYMENT. Adds Title IV-D service fees to the list of prioritized items for which collected child support money is to be applied.

SECTION 7. Amends Subdivision (1), Section 157.311, Family Code, to provide that the definition of “account” includes any accrued interest and dividends credited to an account in which a individual has a beneficiary interest, whether as a signatory or not, and that it includes an account in which the individual has a community or separate property interest.

SECTION 8. Amends Section 156.313, Family Code, by adding Subsection (f) to provide that a lien notice for a lien on real property is not required to include a known social security number of the obligee or the obligor.

SECTION 9. Amends Section 157.314, Family Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires a financial institution receiving a child support lien notice to provide the claimant with the last know address of the obligor and to disclose to the claimant the amount in the obligor’s account at the time of receipt of the notice, before the deduction of any authorized fees;

(e) Requires a financial institution, on request, to provide the claimant under a child support lien notice with a statement showing deposits to the obligor’s account made from the date of receipt of the lien notice to the date of receipt of a request for information concerning deposits to the account.

SECTION 10. Amends Subsection (a), Section 157.317, Family Code, to provide that a child support lien applies to all constitutionally non-exempt real and personal property of an obligor, including an account in a financial institution in which funds are held for the obligor’s benefit, regardless of whether the account is in the obligor’s name or in the name of a nominal owner other than the obligor.

SECTION 11. Amends Subsection (a), Section 157.318, Family Code, to make conforming changes.

SECTION 12. Amends Section 157.324, Family Code, to create Subsection (a) and to add Subsections (b) - (c), as follows:

Sec. 157.324. LIABILITY FOR FAILURE TO COMPLY WITH ORDER OR LIEN. (a) Provides a penalty applicable to a person who encumbers or in any way disposes of

property that is subject to a child support lien, or fails to surrender nonexempt personal property as directed by a court under this subchapter. Provides that the penalty is equal to the greater of two times the value of the property disposed of or not surrendered or \$5,000, not to exceed the amount of the child support arrearages for which the lien or foreclosure judgment was issued. Deletes existing text relating to administrative orders and levy notices.

(b) Authorizes a claimant to recover costs and reasonable attorney's fees incurred in an action under this section.

(c) Provides that an amount paid by a person under this section may not be credited against child support arrearages owed by the obligor.

SECTION 13. Amends Section 157.327, Family Code, by amending Subsections (b) - (c) and adding Subsection (f), as follows:

(b) Places additional content requirements for a notice under this section. Requires the notice of levy to include the amount of arrearages owed at the time the amount was determined or, if less, the amount owing at the time the notice is prepared and delivered to the financial institution.

(c) Makes a conforming change to specify that the fees due an institution are service fees.

(f) Authorizes a financial institution to deduct the service fees and costs identified in Subsection (c) from an obligor's assets before paying the claimant.

SECTION 14. Amends Section 157.329, Family Code, as follows:

**NEW HEADING: NO LIABILITY FOR COMPLIANCE WITH NOTICE OF LIEN OR NOTICE.** Provides that a financial institution freezes assets subject to a child support lien or time surrenders the assets or right to assets in accordance with a child support levy is not liable to the obligor or any other person for the property or rights frozen or surrendered.

SECTION 15. Amends Section 157.330, Family Code, to create Subsection (a) and to add Subsection (b) as follows:

Sec. 157.330. **FAILURE TO COMPLY WITH NOTICE.** (a) Provides that person who has property subject to levy and fails to timely surrender the property that should have been paid or delivered to the claimant on demand is liable to the claimant for the greater of an amount equal to two times the value of the property or right to property that should have been paid or delivered or \$5,000, not to exceed the amount of child support arrearages for which the notice of levy was filed.

(b) Authorizes a claimant to recover costs and reasonable attorney's fees incurred in an action under this section.

SECTION 16. Amends Subchapter C, Chapter 158, Family Code, by adding Section 158.214, as follows:

Sec. 158.214. **WITHHOLDING FROM LUMP-SUM PAYMENTS.** Defines "lump-sum payment." Specifies to whom this section applies. Sets forth the manner, conditions, and time frame in which an employer to whom this section applies may make a lump-sum payment to the obligor in an amount over \$500. Prohibits an employer from making a lump-sum payment to the obligor before the earlier of specified dates, after the employer has notified the Title IV-D agency in compliance with the provisions in this section. Requires an employer who receives timely authorization from the Title IV-D agency to make the lump-sum payment only in accordance with the terms of authorization.

SECTION 17. Amends Section 158.502(a), Family Code, to make a conforming change.

SECTION 18. Amends Section 158.506, Family Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes the obligor to file a motion to withdraw the administrative writ of withholding and request a hearing in certain cases under a specified time frame. Deletes existing text relating to an obligor's remedy entitlements for cases in which an application notice for judicial writ of withholding was not received.

(d) Authorizes an obligor to file a motion in accordance with Subsection (c) if the administrative writ is issued on the order of a tribunal of another state not registered under Chapter 159 (Uniform Interstate Family Support Act).

SECTION 19. Amends Section 158.507, Family Code, to make conforming changes.

SECTION 20. Amends Section 231.006(b), Family Code, to delete text providing that a child support obligor ineligible to receive payments under Subsection (a-1) remains ineligible until certain actions have taken place.

SECTION 21. Amends the heading of Section 231.012, Family Code, to read as follows:

Sec. 231.012. CHILD SUPPORT WORK GROUP.

SECTION 22. Amends Sections 231.012(a), (b), and (c), Family Code, as follows:

(a) Authorizes the director of the Title IV-D agency to convene a work group composed of certain entities with an interest in child support enforcement in Texas to work with the director to develop strategies to improve enforcement. Deletes existing text relating to requiring the director to establish a county advisory work group and composition thereof.

(b) Requires the director to appoint the members of the work group after consulting with appropriate public and private entities. Deletes existing text relating to consulting with relevant professional or trade associations, and text relating to requiring the director to appoint the members and presiding officer of the work group.

(c) Requires the work group to meet as convened by the director and to consult with the director on matters relating to child support enforcement in Texas, including the delivery of Title IV-D services. Deletes existing text relating to specific plans and programs on which the work group and director are to be required to convene.

SECTION 23. Amends Section 231.103, Family Code, by amending Subsection (f) and adding Subsection (g-1), as follows:

(f) Authorizes the state disbursement unit to collect a \$3 monthly service fee in each case in which support payments are processed through the unit.

(g-1) Specifies that an authorized fee under this section is part of the obligor's child support obligation and may be enforced in any manner available for the enforcement of child support, including contempt.

SECTION 24. Amends Section 233.019, Family Code, by adding Subsection (d), to require a child support order issued by a tribunal of another state and filed with an agreed review order to be treated as a confirmed order, notwithstanding registration under Subchapter G, Chapter 159.

SECTION 25. Amends Section 234.008(a), Family Code, to make a conforming change.

SECTION 26. Amends Subchapter A, Chapter 234, Family Code, by adding Section 234.012, as follows:

Sec. 234.012. RELEASE OF INFORMATION FROM STATE CASE REGISTRY.

Requires the state case registry to provide, on request and to the extent permitted by federal law, the required information under Sections 105.006 and 105.008 in any case to

specified persons or entities, unless otherwise prohibited in accordance with Section 105.006(c).

SECTION 27. Repealer: Section 231.006(a-1) (relating to the ineligibility of a delinquent obligor for student financial assistance), Family Code.

Repealer: Section 231.011 (Interagency Workgroup), Family Code.

Repealer: Section 231.103(d) (Relating to a service fee that a Title IV-D agency may charge), Family Code.

Repealer: Section 231.310 (Interagency Workgroup), Family Code.

Repealer: Sections 234.008(c), (d), and (e) (Disposition of Funds), Family Code.

Repealer: Chapter 235 (Sharing Information In State Case Registry), Family Code.

SECTION 23. Makes application of this Act prospective.

SECTION 24. Effective date: September 1, 2007.

### **EFFECTIVE DATE**

September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.S.B.231 modifies the original S.B.231 by adding a new SECTION 7 to redefine “account” under Section 157.311, Family Code, to include any financial account in which an individual has a beneficial ownership, whether or not as signatory, and an account in which the individual has a community or separate property interest.

Adds a new SECTION 8 to provide that a child support lien notice under Section 157.313, Family Code, is not required to identify the social security number of an obligor or obligee if the notice is for a lien on real property.

Adds a new SECTION 9 to require a financial institution, on receipt of a child support lien notice, immediately to disclose to the claimant the amount in the obligor’s account at the time of receipt of the notice, before the deduction of any authorized fees, and, on request, to provide the claimant with a statement showing deposits in the account from the time of receipt of the lien notice to date of request for the information.

Adds a new SECTION 10 to provide that a child support lien attaches an account of an obligor in a financial institution, regardless of whether the account is in the name of the obligor or in the name of a nominal owner other than the obligor.

Amends SECTION 8 of the bill (renumbered as SECTION 12 in the House committee substitute) by specifying under Section 157.324, Family Code, that the liability of a person who fails to comply with a child support lien by disposing of the property of an obligor or who fails to surrender the obligor’s property as directed by a court on foreclosure is in an amount that is the greater of two times the value of the property disposed of or not surrendered or \$5,000, but not to exceed the amount of the child support arrearages for which the lien or foreclosure judgment was issued. Further, the amended SECTION provides that a claimant may recover costs and reasonable attorney’s fees incurred in an action under this Family Code section and that any amount paid by a person under this code section may not be credited against the child support arrearages owed by the obligor.

Amends SECTION 9 of the bill (renumbered as SECTION 13 in the House committee substitute) by amending Subsection (c), Section 157.327, Family Code, and to add a Subsection (f) to specify that the fees a financial institution may deduct from an obligor’s assets before paying an appropriate amount to a claimant are the service fees of the institution.

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Amends the bill by adding a new SECTION 14 to amend the heading of Section 157.329, Family Code, and the provisions of the section to address the receipt by a financial institution of a notice of lien, as well as a notice of levy, and provide that a financial institution is not liable to the obligor or any other person for complying with a notice of lien or levy.

Amends SECTION 10 of the bill (renumbered as SECTION 15 in the House committee substitute) to provide, under a new Subsection (a), Section 157.330, Family Code, that the liability of a person who fails to comply with a notice of levy is in an amount equal to the greater of two times the value of the property or right to property that should have been paid or delivered to claimant or \$5,000, not to exceed the amount of the child support arrearages for which the notice of levy was filed. The amended SECTION adds a subsection (b), Section 157.330, Family Code, to authorize a claimant to recover costs and reasonable attorney's fees incurred in an action under the section.